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No. 92-528

In the Supreme Court of the United States

OCTOBER TERM, 1992

CHRIS SALE, ACTING COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, ET AL., PETITIONERS

v.

HAITIAN CENTERS COUNCIL, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR THE PETITIONERS

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1. In the pending certiorari petition, we seek review of the June 10, 1992, judgment of the court of appeals that affirms, as modified, the preliminary injunction entered by the district court. As modified, that injunction barred petitioners from reinterviewing or repatriating "screened-in" interdictees at the U.S. Naval Base at Guantanamo Bay, Cuba, without first affording them access to counsel. Pet. App. 162a, 117a-118a.[1]

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[1] "Pet. App." refers to the appendix to the petition for a writ of certiorari in *Sale, Acting Commissioner, Immigration and Naturalization Service, et al.* v. *Haitian Centers Council, Inc., et al.*, No. 92-344 (argued Mar. 2, 1993).

In our pending certiorari petition, we argue (1) that respondents' claims are barred under the doctrine of collateral estoppel (Pet. 22-26), and (2) that the Second Circuit in any event erred in sustaining the preliminary injunction on the basis of the Due Process Clause (Pet. 15-22). We suggest (Pet. 26-30) that the Court grant the petition and summarily reverse the due process ruling, or, in the alternative, that it hold the petition and dispose of it as appropriate in light of its decision in *Sale, Acting Commissioner, Immigration and Naturalization Service, et al.* v. *Haitian Centers Council, Inc., et al.*, No. 92-344 (argued Mar. 2, 1993).

On June 8, 1993, the district court entered a further order in the case, again relying on the Due Process Clause, as well as other grounds. Resp. Supp. Br. App. 1-44.[2] The June 8 order includes permanent injunctive relief that, *inter alia*, bars petitioners (1) from conducting, in accordance with the Rees Memorandum of February 29, 1992 (see Pet. 6-8), further interviews of "screened-in" interdictees at Guantanamo, in any other territory subject to the jurisdiction of the United States, or on Coast Guard cutters, and (2) from denying the plaintiff Haitian Service Organizations immediate access to any member of the class of screened-in plaintiffs at Guantanamo, on Coast Guard cutters, or at any other place subject to the jurisdiction of the United States. The order also directs that screened-in plaintiffs be immediately released (to anywhere but Haiti) from detention at Guantanamo. Resp. Supp. Br. App. 42-44. The government has decided not to seek a stay of that order

[2] We previously furnished the Court with copies of the June 8 order.

as it applies to the screened-in migrants remaining at Guantanamo, and instead to bring those migrants to the United States. No decision has yet been made concerning an appeal of the permanent injunctive relief or other aspects of the June 8 order.

2. On June 11, 1993, respondents filed a supplemental brief in this Court, stating that the entry of the June 8 order dissolves the preliminary injunction and renders proceedings on appeal of that injunction moot. Respondents argue that the Court should therefore deny our pending certiorari petition seeking review of the Second Circuit's affirmance of the preliminary injunction.

We agree that the preliminary injunction now is moot. As we stated in our reply brief (at 10), however, the proper disposition in the event of mootness is not to deny the petition, but rather to grant the petition and vacate the judgment of the court of appeals as moot. See *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950); *University of Texas* v. *Camenisch*, 451 U.S. 390 (1981).

For the foregoing reasons, the petition for a writ of certiorari should be granted and the judgment of the court of appeals entered June 10, 1992, should be vacated as moot.

Respectfully submitted.

LAWRENCE G. WALLACE
Acting Solicitor General[*]

JUNE 1993

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[*] The Solicitor General is disqualified in this case.